REMARKS

The Office Action dated January 25, 2007, rejected Claims 1-22 as being unpatentable over Gutterman et al. (US 5,297,031) (hereinafter "Gutterman") in view of Nelson (US 4,823,265). Claims 1-22 have not been amended herein. Claims 23-28 have been added. Claims 1-28 are thus pending in the application. Applicant has carefully considered the cited art and the comments provided in the Office Action, and submits that the pending claims are patentable over the cited art.

Patentability of Claims 1-3

Claim 1 reads as follows:

> 1. A method of facilitating trading, comprising:
> automatically, via a computer, sending a trial order to a market, and
> automatically, via the computer, receiving a report indicating that the trial order would have been paired if it had been a regular order,
> wherein a trial order is for discovery of current market depth at a price and is not an order to buy or sell.

Gutterman is directed to a method and apparatus for order management by market brokers. Orders are received and displayed for execution. In particular, the orders may be arranged and displayed in an order deck, along with a total of orders at the market price. (See abstract of Gutterman). Gutterman discusses handling order acceptances, fill reports and cancel confirmations (Col. 6, lines 53-55). "Buy orders are represented in the deck pane as blue square shapes, and sells order are represented as red circles, both of which include indications of the quantities of the orders represented." (Col. 12, lines 21-24.) Filling orders is further noted at Col. 13, lines 27-46, which discusses communicating the filled order information to a clearinghouse. See also the preamble of Claim 1 of Gutterman ("A broker workstation for managing buy and sell orders submitted to a broker from a plurality of customers for execution in a commodities, securities, securities options, futures contracts or futures options exchange")

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

and Claim 8 (". . . a method for managing buy and sell orders submitted to a broker from a plurality of customers for execution in a commodities, securities, securities options, futures contracts or futures options exchange").

Applicant strongly disagrees that Gutterman discloses a "trial order" as claimed. In particular, Gutterman does not teach "sending a trial order to a market" and "receiving a report indicating that the trial order would have been paired if it had been a regular order," as claimed, "wherein a trial order is for discovery of current market depth at a price and is not an order to buy or sell." The Office Action provides no indication which orders in Gutterman are considered to be "trial orders" and which orders in Gutterman are considered to be "regular orders." This is not surprising because, in all cases, the orders discussed in Gutterman are "regular orders" to buy and sell, and when executed, result in a trade between market participants.

Recognizing a deficiency of disclosure in Gutterman ("Gutterman fail to explicitly teach an order to buy or sell" -- Office Action, page 2), the Office Action relied on a combination of Gutterman and Nelson to reject Claim 1. However, the disclosure of Nelson is unavailing and does not overcome the deficiencies of Gutterman.

Nelson is directed to an accounting and marketing system for buying and selling renewable options. As is known in the art, options are tradable instruments that are regularly bought and sold at markets. In the context of tradable securities, an option is a contract that grants the owner a right to buy (in the case of a call) or sell (in the case of a put) a certain number of shares of a particular security at a given price. (See Nelson, Col. 1, lines 15-19.) Option contracts are separately tradable from their underlying securities. Options markets or exchanges designate different symbols for trading option contracts that have different strike prices and different expiration dates. Just as with orders to buy and sell shares of a stock, orders

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

to buy and sell option contracts are paired at a market and result in a trade between buyers and sellers.

In rejecting Claim 1, the Office Action quoted Nelson at Col. 6, lines 3-21, which reads as follows:

> The current market price of the underlying security is listed on the display. Offer prices are listed according to strike price, which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example.

As can be seen, this passage of Nelson teaches nothing about a "trial order," as claimed in the present application. The example shown in Nelson at Figure 5a and described above concerns the display of *current market prices* for buying and selling different tradable instruments, namely shares of "XXX Corp." and option contracts for XXX Corp. A display of current prices does not provide information as to current market depth at a price and does not suggest a "trial order" as claimed; indeed, such a display is indicative of "regular orders" to buy and sell at a market. According to Nelson, when a trader desires to buy or sell an option contract, the trader enters a buy or sell order which is executable at the market. In contrast, a trial order as claimed in the present application does not result in a trade between market participants.

The Office Action (page 3) concluded "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

include an order to buy or sell taught by Nelson." This conclusion, however, is not commensurate with the language of Claim 1. In Claim 1, a trial order expressly is not an order to buy or sell. The suggestion in the Office Action to "modify the teachings of Gutterman to include an order to buy or sell" is directly contrary to a "trial order" as claimed in the present application.

The disclosures of Gutterman and Nelson, whether considered alone or combined, fail to teach the elements in Claim 1 and thus fail to establish a *prima facie* case of obviousness. The rejection of Claim 1 should be withdrawn and the claim allowed.

For further discussion of trial orders, the Examiner is invited to consider the portions of the present application set forth in applicant's prior response dated October 23, 2006. These portions include, for example:

page 8, lines 24-28;

page 27, line 14, to page 28, line 2; and

page 114, line 5, to page 115, line 3.

The foregoing passages provide only a sample of the description of trial orders included in the present application as the application includes other references that describe trial orders and their use in various embodiments. See also, for example, the description of FIG. 70 at page 85, line 9, to page 86, line 4.

Claims 2 and 3, which depend from Claim 1, are patentable for the same reasons as Claim 1 and for the additional subject matter they recite. In particular, neither Gutterman nor Nelson teaches the following features:

- wherein the report also indicates the price at which the trial order would have been paired if it had been a regular order (Claim 2); and
- wherein the automatically sending and receiving are performed by a trading process (Claim 3).

Claims 2 and 3 should be allowed.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

Patentability of Claims 4-11

Claim 4 reads as follows:

> 4. A method of facilitating trading, comprising:
> automatically, via a computer, receiving a trial order,
> automatically, via the computer or another computer, entering the trial order into an order file, and
> automatically, via the computer or another computer, reporting when the trial order would have been paired had it been a regular order,
> wherein a trial order is for discovery of current market depth at a price and is not an order to buy or sell.

As noted above with respect to Claim 1, Gutterman discloses a method and system for order management by market brokers. Orders are received and displayed for execution. Filling orders includes communicating filled order information to a clearinghouse. The orders disclosed by Gutterman result in actual trades between market participants. In contrast, a trial order as recited in Claim 1 "is not an order to buy or sell."

Acknowledging that Gutterman is deficient, the Office Action further relied on Nelson to support the rejection of Claim 4. Similar to Claim 1, the Office Action quoted Nelson at Col. 6, lines 3-21 in rejecting Claim 4. Applicant has considered this passage of Nelson, and indeed the entire specification of Nelson, and does not find any disclosure of a trial order as claimed, "wherein a trial order is for discovery of current market depth at a price and is not an order to buy or sell." Nelson's display of prices for options and/or shares of a stock, as illustrated in Figure 5a, does not provide any information as to current market depth at a price, nor is it suggestive of trial order, as claimed in the present application. As noted earlier, an order to buy or sell an option as taught by Nelson is executable as a regular order at a market.

Gutterman and Nelson, whether considered alone or combined, do not teach or suggest the elements of Claim 4. Claim 4 should thus be allowed.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

Claims 5-11, which depend either directly or indirectly from Claim 4, are patentable for the same reasons as Claim 4 and for the additional subject matter they recite. In particular, Gutterman and Nelson, whether considered alone or combined, fail to teach the following features:

- further comprising selecting the trial order for pairing with an active side order without affecting the pairing priority of other orders in the order file (Claim 5);
- wherein the automatically reporting includes sending a pairing report for zero shares to a source of the trial order (Claim 6);
- wherein the pairing report includes the price at which the trial order would have been paired had it been a regular order (Claim 7);
- further comprising automatically responding to market inquiries based on orders in the order file other than the trial order (Claim 8);
- further comprising automatically removing the trial order from the order file after reporting when it would have been paired (Claim 9);
- wherein the automatically receiving, entering and reporting are performed by a market process (Claim 10); and
- wherein the trial order is received from a trading process (Claim 11).

Claims 5-11 should be allowed.

Patentability of Claims 12-22

Claims 12-14 and 15-22 are directed to systems that facilitate trading. In view of the discussion provided above relative to Claims 1-3 and 4-11, applicant submits that the cited art does not teach the systems claimed in Claims 12-22, and thus Claims 12-22 should be allowed.

Patentability of Claims 23-28

New Claim 23 is directed to a computer-accessible medium having executable instructions stored thereon for facilitating trading at a market. The instructions, when executed, cause a computer to receive a trial order, enter the trial order into an order file, and report when the trial order would have been paired at the market had it been a regular order. A trial order is for discovery of current market depth at a price and is not an order to buy or sell.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

For reasons similar to those discussed above relative to Claims 4-9, applicant submits that Claim 23 and its dependent Claims 24-28 are not taught or suggested by the cited art, and thus are in allowable condition.

CONCLUSION

The disclosures of Gutterman and Nelson do not support a *prima facie* case of obviousness of Claims 1-22. Applicant requests withdrawal of the rejection of Claims 1-22 and allowance of Claims 1-28 as now pending in the application. Should any issues remain needing resolution prior to allowance, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS[PLLC]

Kevan L. Morgan
Registration No. 42,015
Direct Dial No. 206.695.1712

KLM:jmb

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS[PLLC]
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100